

Notice of Allowability

Application No.

10/017,998

Applicant(s)

THONG ET AL.

Examiner

Carl H. Layno
6/21/04

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Paper No. 5/5/2004.
2. ☒ The allowed claim(s) is/are 1-27, 29-49, 51-62 and 64-69.
3. ☒ The drawings filed on 13 December 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

DETAILED ACTION

1. Acknowledgment is made of applicant's amendment which was received by the Office on May 5, 2004.

2. Claims 28, 50, and 63 are canceled. Claims 1-27, 29-49, 51-62, and 64-69 are active.

Claim Objections

3. In view of the applicant's modification to claim 33 and cancellation of claims 50 and 63, the Examiner is withdrawing the 37 CFR 1.75(c) objections, which were made against claims 33, 50, and 63 in the last Office action.

Claim Rejections - 35 USC § 112

4. In view of applicant's modifications to claims 1-4, the Examiner is withdrawing the 35 U.S.C 112 2nd paragraph rejections, which were made against claims 1-69 in the last Office action.

Claim Rejections - 35 USC § 103

5. Upon further reconsideration of applicant's arguments and amendments to the claims and cancellation of claim 28, the Examiner is withdrawing the 35 U.S.C 103(a) rejections based upon the references of Ujhelyi et al '621-A1, Rosborough et al '267, and Elsberry et al '689, which were made against claims 1, 2, 6, 7, 13, 14, 21, 28, and 29 in the last Office action.

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Examiner's Amendment

6. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with David J. Muzilla on June 22, 2004.

The application has been amended as follows:

-Change the Abstract to read as follows:

“ ABSTRACT

Apparatus for treating fibrillation of at least one chamber of a heart comprising a fibrillation detector for detecting a fibrillation, a defibrillator for defibrillating the chamber of the heart, wherein the defibrillator is connected to the fibrillation detector and is adapted to effect defibrillation subsequently to a time interval after detection of the fibrillation, a warning device which is connected to the fibrillation detector and which is adapted to deliver a warning signal when a fibrillation has been detected, and a control circuit having a control input actuable by a patient, wherein the control circuit is connected to the defibrillator and is adapted to delay the time of a defibrillation if the control circuit receives a corresponding signal by way of the control input, wherein the apparatus includes a condition detector which is adapted to detect a hemodynamic condition of the heart, and the control circuit is connected to the condition detector and is adapted to prevent a delay in the time of defibrillation when the condition detector detects a predetermined hemodynamic condition.”, and

-Claim 1, line 9, replace the words “means for controlling the apparatus” with the words: “control means for controlling the apparatus”.

Allowable Subject Matter

7. Claims 1-27, 29-49, 51-62, and 64-69 are allowed.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The Brandell '651, Sears '519, and Adams et al '271-A2 (European) patents are cited herein by the Examiner for their pertinent teachings of atrial defibrillation detection and delay circuitry. Unlike applicant's claimed device, however, the defibrillators described in these references are not equipped with "control means" capable of preventing delay from occurring when a condition detector detects a predetermined hemodynamic condition.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (703) 308-3694. The examiner can normally be reached on Monday thru Thursday from 9 AM to 6 PM and every other Friday between 9AM and 5PM. A voice mail or E-mail message (carl.layno@uspto.gov) may be left if desired.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes, can be reached on (703) 308-5181. All faxed communications should be sent to the Office's new official FAX number (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Legal Instruments Examiner (LIE) Brenda Webb whose telephone number is (703) 305-7520.

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Carl H. Layno

CARL LAYNO
PRIMARY EXAMINER

CHL

6/21/2004